

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

ESSILOR LABORATORIES OF AMERICA, INC.
13515 North Stemmons Freeway
Dallas, TX 75234


Plaintiff,

vs.

Case No.

08CW 595

Case Code:: 30303
(Other Contracts)

 ST. PAUL FIRE AND MARINE INSURANCE
COMPANY n/k/a THE TRAVELERS COMPANIES, INC.
385 Washington Street
St. Paul, MN 55102

Defendant.

AUTHENTICATED COPY
FILED

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SUMMONS

LISA M. WILSON
CLERK OF COURTS
BROWN COUNTY, WI

THE STATE OF WISCONSIN, To each person named as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty (40) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Courts, Brown County Courthouse, 100 South Jefferson Street, Green Bay, Wisconsin 54301-4532, and to Plaintiff's attorney, whose address is 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202. You may have an attorney help or represent you.

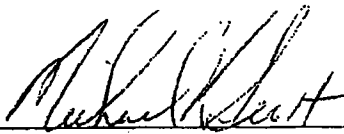
If you do not provide a proper answer within forty (40) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A

judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee, Wisconsin, this 5th day of March, 2008.

DAVIS & KUELTHAU, s.c.
Attorneys for Plaintiff

By: _____



Michael K. Scott
State Bar No. 1004440

P.O. ADDRESS:

111 East Kilbourn Ave.-#1400
Milwaukee, WI 53202
(414) 276-0200

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COMPLAINT

LISA M. WILSON
CLERK OF COURTS
BROWN COUNTY, WI

NOW COMES the above-named plaintiff, Essilor Laboratories of America, Inc., by its attorneys, Davis & Kuelthau, s.c., by Michael K. Scott, and as and for a cause of action against the above-named defendant, alleges and shows to the Court as follows:

1. The plaintiff, Essilor Laboratories of America, Inc., is a foreign corporation with its principal place of business located at 13515 North Stemmons Freeway, Dallas, Texas, 75234.
2. The defendant, St. Paul Fire and Marine Insurance Company, n/k/a The Traveler's Companies, Inc. is a foreign insurance corporation that is authorized to do business in the State of Wisconsin and which has one of its principal places of business located at 385 Washington Street, St. Paul, Minnesota, 55102. Its registered agent for service of process is CSC Lawyers Incorporating Service Company, 25 West Main Street, Madison, Wisconsin 53703.

3. The plaintiff, Essilor Laboratories of America, Inc., was previously known as Southern Optical Company. Southern Optical Company's name was changed to Essilor Laboratories of America, Inc. effective December 18, 2000. Southern Optical Company purchased, in a stock sale, W.O.S., Inc., a Wisconsin corporation, effective on December 31, 1997. W.O.S., Inc. was previously known as Wisconsin Optical Supply, Inc. Wisconsin Optical Supply, Inc.'s name was changed to W.O.S., Inc. effective October 12, 1976. Wisconsin Optical Supply, Inc. began to market and/or sell industrial safety products, including respirators, to various customers, including foundries, in the mid to late 1960's. After Wisconsin Optical Supply, Inc.'s name was changed to W.O.S., Inc. effective October 12, 1976, W.O.S. Inc. continued to market and/or sell industrial safety products, including respirators, to various customers, including foundries, up until approximately September 1, 1996, when the industrial safety products division of W.O.S., Inc. was sold, in an asset sale, to Elvin Safety Supply, Inc. W.O.S., Inc. no longer sold industrial safety products, including respirators, after September 1, 1996.

4. Since Southern Optical Company purchased W.O.S., Inc. in a stock sale on December 31, 1997, its successor, the plaintiff Essilor Laboratories of America, Inc., is liable for any contingent tort liabilities of W.O.S., Inc./Wisconsin Optical Supply, Inc.

5. On October 18, 2005, eleven foundry workers and the personal representative of the estate of a twelfth foundry worker commenced an action in the Circuit Court of Winnebago County in Oshkosh, Wisconsin, specifically case no. 05-CV-001237, against numerous defendants, including manufacturers and retailers of respirators. W.O.S., Inc. was named as a defendant in this action and negligence and strict product liability claims were asserted against

W.O.S., Inc. arising out of the sale of respirators which were alleged to be defective and unreasonably dangerous.

6. The eleven plaintiffs, and the personal representative of the estate of the twelfth deceased plaintiff, alleged that they were present or former foundry workers that suffered from occupational lung diseases, including but not limited to silicosis, caused by exposure to silica sand and silica-containing products and/or other pneumoconiosis producing dusts, while using dust respirators manufactured by a number of the defendants and sold by a number of the defendants, including but not limited to W.O.S., Inc.

7. The plaintiffs further alleged that their silicosis related injuries, or the silicosis related injuries or death of their decedent, did not become manifest or apparent until long after they were exposed to the silica sand, silica containing products and/or pneumoconiosis producing dusts while wearing the allegedly defective respirators; further, that plaintiffs allege they were not aware more than three years before the filing of their complaint, and were not possessed of information from which they should have been aware, as to both the nature of their injuries and the causal connection of those injuries to the negligence and/or defective products manufactured and/or sold by the various defendants.

8. That following the service of the complaint in the Winnebago County action, the plaintiff Essilor Laboratories of America, Inc., retained counsel and filed an answer denying the allegations as to negligence and strict liability as they pertained to W.O.S., Inc.; thereafter, retained counsel commenced an investigation to ascertain the identities of all of the insurers who issued comprehensive general liability policies to Wisconsin Optical Supply, Inc. and W.O.S., Inc. from the mid to late 1960's up through September 1, 1996.

9. That the investigation into the identities of these insurers revealed that St. Paul Fire and Marine Insurance Company issued comprehensive general liability insurance policies to Wisconsin Optical Supply, Inc. and W.O.S., Inc. from the mid 1970's through March 1, 1985. That St. Paul Fire and Marine Insurance Company was one of The St. Paul Companies, Inc. at the time of the issuance of these policies. Further, that the St. Paul Companies, Inc. merged with Travelers Property Casualty Corporation on or about April 1, 2004 to form The St. Paul Travelers Companies, Inc. That based upon this investigation, the defense of the pending Winnebago County action was tendered to St. Paul Fire and Marine Insurance Company, n/k/a the St. Paul Travelers Companies, Inc., on May 3, 2006; further, that St. Paul Travelers Insurance Company, Inc. advised that it would conduct its own search for insurance policies. That while this search was ongoing, The St. Paul Travelers Companies, Inc. changed its name to The Travelers Companies, Inc. on or about February 27, 2007. Thereafter, in June 2007, representatives of The Travelers Companies, Inc. provided limited documentation from underwriting files located in a document repository.

10. The limited documentation voluntarily provided by The Travelers Companies, Inc. to date indicates that St. Paul Fire and Marine Insurance Company issued primary comprehensive general liability policies to W.O.S., Inc. from February 1, 1983 through March 1, 1985, specifically policy no. 648NB2945 with effective dates from February 1, 1983 to February 1, 1984, and policy no. 648NB2965 with effective dates from February 1, 1984 to February 1, 1985, which latter policy was amended to add an endorsement extending the comprehensive general liability coverage to March 1, 1985. The limited documentation further indicates that St. Paul Fire and Casualty Insurance Company, another one of the St. Paul Companies, Inc., issued umbrella excess liability policies from February 1, 1983 through March

1, 1985, specifically policy no. 548XC0326 with effective dates from February 1, 1983 to February 1, 1984, and policy no. 548XC1051 with effective dates from February 1, 1984 to February 1, 1985, which latter policy was amended to add an endorsement extending the umbrella excess liability coverage to March 1, 1985.

11. The Travelers Companies, Inc. is the current successor to St. Paul Fire and Marine Insurance Company and St. Paul Fire and Casualty Insurance Company and is responsible for the contractual obligations in all of the insurance policies issued by St. Paul Fire and Marine Insurance Company and St. Paul Fire and Casualty Insurance Company.

12. That representatives of The Travelers Companies, Inc. have refused to undertake the defense of W.O.S., Inc. in the pending Winnebago County action averred to in Paragraph 5 above and have taken the position that the limited documentation uncovered to date in its search for insurance policies does not provide sufficient evidence as to the existence of any primary comprehensive general liability policies issued by St. Paul Fire and Marine Insurance Company or any member of The St. Paul Companies, Inc., to Wisconsin Optical Supply, Inc. and/or W.O.S., Inc.

13. There is currently a justiciable controversy concerning the existence of insurance policies issued by St. Paul Fire and Marine Insurance Company and/or one of The St. Paul Companies, Inc. to Wisconsin Optical Supply, Inc. and W.O.S., Inc., and concerning the liability of The Travelers Companies, Inc. for any amounts owed by W.O.S., Inc. for defense of the ongoing Winnebago County action and any settlement/verdict amounts for the silicosis claims brought by the plaintiffs in the Winnebago County action against W.O.S., Inc.; further, there is a justiciable controversy concerning the liability of St. Paul Fire and Marine Insurance Company, or other members of The St. Paul Companies, Inc., in the future for payment of any defense costs

and settlement/verdict amounts for any actions filed against Wisconsin Optical Supply, Inc. and/or W.O.S., Inc. in the future.

WHEREFORE, W.O.S., Inc. demands judgment in its favor and against the defendant, St. Paul Fire and Marine Insurance Company, n/k/a The Travelers Companies, Inc. for the following:

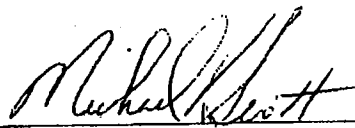
- (1) A declaration that St. Paul Fire and Marine Insurance Company, n/k/a The Travelers Companies, Inc., is obligated to provide Wisconsin Optical Supply, Inc. and W.O.S., Inc. a full defense and complete indemnity for all silicosis-related claims under each triggered insurance policy issued.
- (2) For such other and further relief as the court may deem just and equitable.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY TO RESOLVE ANY FACTUAL DISPUTES RELATING TO THE EXISTENCE OF AND/OR ISSUANCE OF INSURANCE POLICIES BY ST. PAUL FIRE AND MARINE INSURANCE COMPANY, OR OTHER MEMBERS OF THE ST. PAUL COMPANIES, INC., TO WISCONSIN OPTICAL SUPPLY, INC. AND/OR W.O.S., INC.

Dated at Milwaukee, Wisconsin this 5th day of March, 2008.

DAVIS & KUELTHAU, S.C.
Attorneys for Plaintiff

By:


Michael K. Scott
State Bar No. 1004440

P.O. Address:

111 East Kilbourn Ave., Suite 1400
Milwaukee, WI 53202-6613
(414) 276-0200

DANE COUNTY LEGAL NOTICE
SERVED BY Zach Bledins
ON 3/10/08 AT 3:35 P.M.